

IN THE TRADE DISPUTES PANEL)
OF SOLOMON ISLANDS.)

Case No. L9/11 of 1997

IN THE MATTER of the Trade
Disputes Act 1981

AND IN THE MATTER of a referral
of a trade dispute.

BETWEEN: NATIONAL SHIPPING
SERVICES LIMITED
Applicant (Employer)

AND: SOLOMON ISLANDS NATIONAL
UNION OF WORKERS
Respondent (Union)

Hearing: 16th July 1997.

Decision: 24th July 1997.

Panel: A. N. Tongarutu - Chairman
J. Adifaka - Employer Member
D. Bale - Employee Member

Appearances: A. Radclyffe, Barrister & Solicitor, for the Applicant.
Respondent did not appear.

FINDINGS

On July 1, 1997 the applicant gave notice of a trade dispute between itself and the union following a strike notice issued by the union on 4th June 1997. The union claimed to represent its members who are employees of the applicant party. The issue of contention centred on the union's claim for a 15% across the board cost of living increase for 1997. The employer claimed that the parties had reached a deadlock after several negotiations. On the same day the secretary to the Panel issued notice of the referral to the parties advising them that the case was listed for a full inquiry on 16th July 1997 at 10am and that section 10 of the Trade Disputes Act 1981 applied to the dispute. Section 10 of the Act provides that, "at any time where a trade dispute has been referred to a Trade Disputes Panel and the Panel have neither succeeded in bringing about the settlement of the dispute by negotiation, nor made an award in the dispute, no person shall do any of the things mentioned in subsection 2".

Subsection 2 restricts industrial action when a dispute is pending before this tribunal.

In March 1997 when the union submitted its claim of 15% increase, the company queried the union's membership and requested an updated list of employees who intended to be members of the union to enable the Board to consider their claim. The company however, did not receive the list until the 10th of June but prior to this on the 4th of June 1997 the union had issued the company with a 28 days strike notice claiming unanimous support from its member employees. On the 17th of June the General Manager of the company had a meeting with the inhouse union committee and explained to them the company's grave financial position which disabled the company from catering to their demand. Nevertheless, the committee still insisted on the pay increase. On 19th June, the Board endorsed the management's decision. This was conveyed to the union committee on Friday 27th June but the union still stood by its claim and at the expiry of the notice, the employees went on strike.

The crux of the company's case was that, (a) the employees were not members of the union at the time their log of claim was submitted and at the time the strike notice was issued and (b) the company cannot financially afford the claim.

On the point of membership the Panel heard submissions to the effect that subscriptions were not renewed until June 27th after the strike notice was issued when the employees subscription fees were deducted and paid to the union. Solicitor for the Company relied on the usage of the word "members" under paragraph 1 of Appendix II of the Collective Agreement. Paragraph 1 stipulates and I quote, **" that any terms and conditions agreed on and signed between the National Shipping Services and the Union be applied to employees who are "members" of the Solomon Islands National Union of Workers"**. In this case none of the employees were members of the union at the time the log of claim was submitted so therefore, the Collective Agreement could not have had any application at that point of time. The point to be determined was whether the union did have a legal standing to represent its employees. It was the company's case

that the union has no legal standing and therefore could not have acted in a responsible manner.

Furthermore, the irresponsibility of the union came into question. In regard to the recent development which showed that the union initially supported the strike action but later, on the same day advised its employees to return to work. Also the union failed to respond to the Panel secretary's letter dated 10th of July 1997, requesting the union to state whether the decision to take strike action was initiated by or supported by the union. It also failed to appear at the hearing to represent its case. This indicates a sign of bad faith on the part of the union.

On the point of affordability the Panel heard submissions that the company could not entertain any pay rise this year because the company is desperately facing serious financial problems. The Solomon Islands Government statistics showed an overall performance of 1996 retail prices to have stabled at 12%. Due to the company's position and the current inflation rate it could not afford the wage increase claimed. In support of its financial constraints documents were submitted which showed that the company has huge debts to the Inland Revenue and the SINPF. A copy of the company's 1997 First Quarterly Report showed a total debt to the tune of \$0.5 million and its Summary Report for 1995 and 1996 showed that the company made an operative loss of \$3,684,260.66. Potential for making revenue from its fleet of eight was reduced to only three vessels following operational problems. Recently the MV Bulumakao sank and the owners are in the process of lodging a claim against the company. In 1996 the company gave a 4% pay rise against the union's claim of 8%. In that year the company was able to accommodate the union's claim because all the ships were in operation. This year's financial situation places the company in a position whereby salary increases cannot be accommodated. With the 15% demand backdated to January 1997 it would mean that the company was expected to pay eight thousand(\$8,000.00) dollars monthly on wages and ten thousand(\$10,000.00) dollars monthly on NPF. The company cannot afford this. The principal owner has given the company strong instructions not to pay the wage increase claimed and has requested the company to review the structure of the company.

This review may lead to a redundancy exercise and termination of the employees.

The Panel finds that the usage of the word "members" in paragraph 1 of Appendix II in the agreement means financial members. In the absence of financial membership the company appropriately refused to recognise SINUW as the union having legal standing to represent its employees and as such, the log of claim and the issuance of the strike notice was out of order. The company was not obliged to negotiate with the union on its members salary increase claim. It would also appear that the respondent party was in breach of section 10 of the Trade Disputes Act 1981 by resorting to strike. The union acted irresponsibly in failing to firstly ensure that the workers it purported to represent were financial members. Since financial membership has now been paid up the parties have an option for fresh negotiations.

On the issue of affordability, the Panel having regard to section 6(4) of the Trade Disputes Act 1981 and the financial cashflow problem of the company, finds that any wage increase made by the company this year would stifle its growth and give rise to redundancy and as such it cannot make an award in favour of the union's claim.

Costs of the proceedings in the cause.

On behalf of the Panel

A. N. Tongarutu

CHAIRMAN/TRADE DISPUTES PANEL